

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL CHARLES WARD,

Plaintiff,

v.

Case No. 04-73725

HUGH WOLFENBURGER,

HONORABLE AVERN COHN

Defendant.

**ORDER DENYING PETITIONER'S MOTION TO CONSOLIDATE AND
DENYING MOTION FOR EVIDENTIARY HEARING**

This is a habeas case under § 2254. The procedural history is complicated due in part to Petitioner's many filings.

On September 28, 2004, Petitioner filed a petition challenging his 1981 conviction for possession of cocaine. On April 12 2005, the Court transferred the petition to the Court of Appeals for the Sixth Circuit on the ground that it was a successive petition to two previous habeas cases filed in this district and assigned to another judge (see case nos. 03-42701/72858).

On October 5, 2005, Petitioner filed another habeas petition which was assigned to another judge in this district. See Case No. 05-73819. The case was transferred to the Sixth Circuit as a successive petition.

On November 22, 2005, the Sixth Circuit determined that the petition filed in this case was not a successive petition and remanded the case to the Court.

On June 7, 2006, the Sixth Circuit determined in case no. 05-73819 that a transfer was not necessary because Petitioner's petition was already pending in this district in this Court under case no. 04-73725. Thus, the Sixth Circuit determined that case no. 05-73819 was duplicative of 04-73725.

After remand, the Court ordered Respondent to file an answer to the petition together with any additional Rule 5 materials. On February 8, 2006, Respondent filed an answer. On February 13, 2006, Petitioner filed a reply.

Thereafter, Petitioner filed the instant motions to consolidate and for an evidentiary hearing.

In the motion to consolidate, Petitioner seeks to consolidate this case with case no. 05-73819 and have this case assigned to the judge that case. The motion is DENIED. Petitioner's petition will proceed before the Court under this case (case no. 04-73725). Case no. 05-73819 is closed.

As for Petitioner's motion for an evidentiary hearing, the decision whether to order an evidentiary hearing to settle disputed issues of material fact is discretionary with the district court. "Generally, a habeas petitioner is entitled to an evidentiary hearing in federal court if the petition 'alleges sufficient grounds for release, relevant facts are in dispute, and the state courts did not hold a full and fair evidentiary hearing.'" Stanford v. Parker, 266 F.3d 442, 459 (6th Cir. 2001) (quoting Wilson v. Kemna, 12 F.3d 145, 146 (8th Cir. 1994)), cert. denied, 537 U.S. 831 (2002). The Court finds that Petitioner has not satisfied the standard for an evidentiary hearing at this time. Accordingly, the motion is DENIED.

As it appears that all of the papers necessary for a decision, including the Rule 5 materials, have been submitted, no further filings are required by Petitioner.

SO ORDERED.

Dated: June 29, 2006

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 29, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160